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ABSTRACT

Absenteeism has personal as well as institutional causes. It is increasingly impossible for schools to function as custodians of their student, given changing social attitudes toward both youth and authority. Therefore, schools must respond to students' needs by curricular revision, for example, in order to cut down on absenteeism. Hazell summarizes New Jersey's school attendance legislation and the court cases bearing on compulsory education, absenteeism, and truancy. He suggests that state law should be updated and clarified to allow for proper enforcement of compulsory attendance. Local school boards should adopt regulations consistent with state attendance laws. Parents should be fully apprised of district and state policy. (DS)

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COMPULSORY STUDENT ATTENDANCE AND ILLEGAL ABSENTEEISM: AN IRRESOLVABLE PROBLEM? LET'S SEE!

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NATIONAL INSTITUTE OF EDUCATION
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The problem of illegal student absenteeism continues to be a serious one for many school administrators and other teaching staff members, particularly at the secondary level. In 1973 and again in 1974 the National Association of Secondary School Principals in its annual membership poll on school organization and curriculum rated poor attendance as "the most perplexing student problem" by a ratio of two to one over discipline, the second most frequently mentioned difficulty with students.

Presently, an inordinate amount of time is spent by administrators and other personnel in managing the attendance situation when one considers other tasks and obligations of equal, if not of greater importance, worthy of our attention. A good example is the supervision of instruction. Assuming a school year of 180 days, health officials estimate that a "normal" absentee rate would be seven to nine days for each student. Translated into percentages, the expected rate would be four or five percent per year. (Students who would exceed this rate because of long-term illness would amount to less than one percent per year of the total enrollment.) Today, however, absentee rates of ten to fifteen percent are not uncommon. In some urban schools, the rate exceeds thirty percent. (See The Practitioner, Vol. 1, No. 1, NASSP, March 1975.)

This report cites the fact that although absenteeism may be symptomatic of an inadequate curriculum, analysis indicates that this is only one of many causes. Many schools with broad and flexible programs continue to face severe attendance problems. Obviously, increasing absenteeism has deep roots leading in many directions. The causes are personal as well as institutional. Contributing to

EA 008 073

poor attendance may be negative family attitudes, social forces, peer pressures, economic circumstances, home-school relationships, school size, student age, and health. Among the "new" causes cited for the dramatic growth of student absence are winter vacations, erosion of parental control, economic affluence, novel life-styles, and a breakdown in court enforcement of attendance laws.

In the September 1975 NASSP Bulletin, Owen B. Kiernan and B. Frank Brown comment on this subject. Kiernan presents a brief but poignant historical sketch of compulsory schooling dating back to the mid-1600's and emphasizes the reasons for such schooling from that period of time to the present. His position is that compulsory schooling laws not only must be maintained but increased to age 18 in order that the nation's students be afforded opportunities to acquire competencies prior to receiving a high school diploma attesting to the acquisition of (1) functional literacy in reading, writing, and speaking; (2) ability to compute including decimals and percentages; and (3) knowledge of the history and culture of the United States, to include the concepts and processes of democratic governance.

Kiernan cites the need for school districts to provide numerous viable options to students, especially at the secondary level, as an attempt to remove the custodial nature of the secondary school. This would be done while simultaneously providing programs that would afford students the opportunity to become rational contributing members to the society having acquired the skills and aptitudes to meet the complexities of contemporary life. To abolish compulsory schooling past age 14 would create multitudes of young, unskilled, idle young people unable to acquire or maintain gainful employment--a situation resulting in social dynamite--and thus negate all previous attempts at schooling and their ability to become productive citizens.

B. Frank Brown strongly believes that the nation's public secondary schools cannot "continue as custodial institutions and, at the same time, excel (or even survive) in the matter of teaching and learning..." and, subsequently, favors the lowering of compulsory attendance to age 14. He cites three factors which in his

judgment makes custodianship impossible to administer: (1) the earlier maturity of youth; (2) numerous legal and quasi-legal rights extended to school-age young people by the courts (especially the Tinker decision in which the Supreme Court conferred constitutional rights on school children); and (3) the change in attitudes of youth toward authority. B. Frank Brown observes that "compulsory schooling laws are rarely enforced above age 14...and have gone the route of benign neglect." This is his most forceful argument for lowering the compulsory attendance age--"the fact that the law is not enforced and, as a consequence, students everywhere are flouting the law with full knowledge that nothing will happen to them...If youth are to be brought up to understand citizenship, and have respect for the law, then legislation relating to compulsory school attendance must be either rigidly enforced or abolished."

There certainly is merit in both positions. It is highly possible that the secondary schools can get on with the business of teaching and learning--the evolution of due process procedures for students, maturation and attitudinal changes notwithstanding--if the schools and the communities in which they are part commit themselves to developing thoughtfully and systematically various educational options commensurate with the needs of their students. At the same time compulsory attendance statutes can and must be enforced. Creative educational options will acknowledge attendance requirements and will compensate for them by explicitly defining program objectives and student requirements for satisfactory completion of the program.

The New Jersey Administrative Code Title 6:20-1.3 is very difinitive on the matter of student attendance in public schools relative to what constitutes a "school day," a "day of attendance," and "record of attendance."

6:20-1.3 School attendance

(a) For purposes of school attendance a day in session shall be a day on which the school is open and pupils are under the guidance and direction of a teacher or teachers engaged in the teaching process. Days on which school is

closed for such reasons as holidays, teachers' institutes and inclement weather shall not be considered as days in session.

(b) A school day shall consist of not less than four hours of actual school work, except that in an approved kindergarten one continuous session of 2-1/2 hours may be considered as a full day.

(c) An approved kindergarten shall meet the following requirements:

1. Every kindergarten teacher shall be properly certified.

2. A balanced program in an approved facility with adequate equipment, materials and supplies shall be provided each child. This program is to be designed to meet the individual needs of every child and may include instruction in reading and other subjects when it has been determined that a child is ready for such instruction by teacher of the class.

3. The maximum enrollment for any kindergarten class shall be 25 pupils per teacher. The county superintendent of schools may give permission to increase the number in a room to any number he chooses provided another teacher, and auxiliary teacher, or a teacher aide is employed full-time to provide for the increased size.

(d) A day of attendance shall be one in which a pupil is present for the full day under the guidance and direction of a teacher or teachers while school is in session. Whenever over-crowded conditions make it necessary to hold two separate sessions with a different group of pupils in each session a pupil attending for all of either session shall be regarded as having attended for the full day. An excused absence for any reason shall not be counted as a day of attendance in the school register.

(e) A half-day class shall be considered the equivalent of a full day's attendance only if in session for four hours or more, exclusive of recess periods or lunch periods.

(f) An evening school session shall be considered the equivalent of a half-day class in the regular day school for students attending a minimum of two or more hours.

(g) A record of the attendance of all pupils on roll in a school register shall be kept each day that school is in session by a teacher or other authorized person. It shall be the duty of this person to keep the attendance records according to these rules and the specific instructions printed in the school register, and if necessary, according to supplementary instructions issued from time to time by the Commissioner.

(h) No pupil shall be recorded as present unless the school is in session and the pupil or pupils so recorded are under the guidance and direction of a teacher or teachers in the teaching process.

(i) A pupil shall be recorded as absent in the school register when not in attendance at a session of the school while a member of the school, except pupils excused due to religious holidays who shall be recorded as excused.

(j) A pupil shall be recorded as either present, absent, or excused for religious observance, every day the school is in session after he enters until the date he is transferred to another school, transferred to a register for individual instruction and training, or officially leaves the school system.

(k) The Commissioner shall annually prescribe a list of religious holidays on which it shall be mandatory to excuse pupils for religious observances upon the wrotten request signed by the parent or person standing in loco parentis.

(l) The mere presence of a pupil at roll call shall not be regarded as sufficient attendance for compliance with these rules. In a two-session school a pupil shall be present at least one hour during any school session in order to be recorded as present for that session. In a one-session school a pupil shall be present at least two hours during any school session in order to be recorded as present for that session. This rule shall be construed to apply to the occasional individual pupil only and not to a class as a whole.

(m) In one-session schools the attendance of all pupils on roll in a school register shall be recorded for one session only. In such instances the time and length of the session shall be a matter of record in the school register.

Chapter 38 of Title 18A: New Jersey Statutes Annotated Sections 25 through 31 listed below, although very explicit, have not been enforced in many regards. Serious consideration must be given by the schools, the Courts and the Legislature to the statutory requirements and their enforcement.

N.J.S.A. 18A:38-25. Attendance required of children between six and 16: exceptions

Every parent, guardian or other person having custody and control of a child between the ages of six and 16 years of age shall cause such child regularly to attend the public schools of the district or a day school in which there is given instruction equivalent to that provided in the public schools for children of similar grades and attainments or to receive equivalent instruction elsewhere than at school.

Following are excerpts of historical notes of Court Decisions upholding the validity and application of this statue:

1. Validity

The Compulsory Education Law is not unconstitutional as violative of Fourteenth Amendment to federal Constitution, Knox v. O'Brien, 7 N.J. Super. 608, 72 A.2d 389 (1950).

Section 18:14-14 (see, now 18A:38-25, 18A:38-26) was legitimate exercise of police power of state and not infringement of liberty guaranteed by Constitution, Stephens v. Bongart, 189 A. 131, 15 N.J. Misc. 80 (1937).

2. Construction and application

The relationship between child and school authorities is not voluntary one but is compelled by law; child must attend school and is subject to school rules and disciplines; in turn school authorities are obligated to take reasonable precautions for his safety and well-being. Jackson v. Hankinson, 51 N.J. 250, 238 A.2d 685 (1968).

"Equivalent," within 18:14-14 (see, now, 18A:38-25, 18A:38-26) requiring that children attend school or receive equivalent instruction elsewhere than at

school, requires only showing of academic equivalency, not equivalency of social development derived from group education, and private tutoring or home education may be permitted, State v. Massa, 95 N.J. Super. 382, 231 A.2d 252 (1967).

The State's duty to educate [illegible] is a matter of constitutional demand which has been implemented by Legislature by providing for public education of every child within the State, Pingry Corp. v. Hillside Tp., 46 N.J. 457 217 A.2d 868 (1966). . .

The compulsory education statutes, imposing on parents absolute duty to send to school children not physically or mentally disabled or receiving adequate private teaching, are penal in nature, and parents may be convicted as disorderly persons for violation thereof, Everson v. Board of Ed. of Ewing Tp., 133 N.J.L. 350, 44 A.2d 333 (1945) affirmed 67 S.Ct. 504, 330 U.S. 1, 91 L.Ed. 711.

Compulsory education is a matter of public concern and legislative regulation and it should be enforced so long as statutory requirements are reasonable, subject to constitutional limitations. Id. ...

3. Purpose of law

Purpose of law requiring children to attend school, or receive equivalent instruction, is to insure education of all children, State v. Massa, 95 N.J. Super. 382, 231 A.2d 252 (1967). ...

7. Complaint

In prosecution of parent or guardian for being allegedly a disorderly person in failing to comply with 18:14-14 (see, now, 18A:38-25, 18A:38-26) which required that children between 7 and 16 regularly attend public school of district or day school in which there were equivalent instruction or receive equivalent instruction elsewhere than at school, complaint needed only allege that defendant as parent or guardian or other person having custody and control did not cause . child regularly to attend public school of district, State v. Vaughn, 44 N.J. 142, 207 A.2d 537 (1965). ...

9. Burden of proof

Parent charged with failing to cause child to attend school has burden to introduce evidence showing that alternative education was being substituted and if there is such evidence, ultimate burden of persuasion remains with State, State v. Massa, 95 N.J. Super. 382, 231 A.2d 252 (1967).

In prosecution of parent or guardian for being allegedly a disorderly person in failing to comply with 18:14-14 (see, now, 18A:38-25, 18A:38-26) requiring that child regularly attend public school or day school in which there was equivalent instruction or receive equivalent instruction elsewhere than at school, for defendant to prevail on basis of such exceptions there had to be introduced evidence from which it could be found that child attended equivalent day school or that child received equivalent instruction elsewhere, though if there was such evidence, ultimate burden of persuasion remained with State, State v. Vaughn, 44 N.J. 142, 207 A.2d 537 (1965).

In prosecution of parent or guardian for being allegedly a disorderly person in failing to comply with 18:14-14 (see, now, 18A:38-25, 18A:38-26) which required that children regularly attend public school or day school to which there was equivalent instruction or receive equivalent instruction elsewhere than at school, for defendant to prevail on basis of such exceptions there had to be introduced evidence from which it could be found that child attended equivalent day school or that child received equivalent instruction elsewhere, though if there was such evidence, ultimate burden of persuasion remained with State. Id.

10. Exceptions

In prosecution of parent or guardian for being allegedly a disorderly person in failing to comply with 18:14-14 (see, now, 18A:38-25, 18A:38-26) which required that children between 7 and 16 regularly attend public school of district or day school in which there was equivalent instruction or receive equivalent instruction elsewhere than at school, State was not required to prove alternative provisions introduced by word "or" and it was incumbent upon the defendant if he

should rely upon either of the exceptions to introduce evidence in support of them unless it appeared from the State's case, State v. Vaughn, 44 N.J. 142, 207 A.2d 537 (1965).

N.J.S.A. 18A:38-26. Days when attendance required; exceptions

Such regular attendance shall be during all the days and hours that the public schools are in session in the district, unless it is shown to the satisfaction of the board of education of the district that the mental condition of the child is such that he cannot benefit from instruction in the school or that the bodily condition of the child is such as to prevent his attendance at school, but nothing herein shall be construed as permitting the temporary or permanent exclusion from school by the board of education of any district of any child between the ages of five and 20, except as explicitly otherwise provided by law.

(Historical notes of Court Decisions same as N.J.S.A. 18A:38-25)

N.J.S.A. 18A:38-27. Truancy and juvenile delinquency defined

Any child between the ages of six and 16 years who shall repeatedly be absent from school, and any child of such age found away from school during school hours whose parent, guardian or other person having charge and control of the child is unable to cause him to attend school and any pupil who is incorrigible, actually vagrant, vicious, or immoral in conduct, shall be deemed to be a juvenile delinquent and shall be proceeded against as such.

Notes of Decisions

1. Construction and application

The compulsory education statues, imposing on parents absolute duty to send to school children not physically or mentally disabled or receiving adequate private teaching, are penal in nature, and parents may be convicted as disorderly persons for violation thereof. Everson v. Board of Ed. of Ewing Tp., 133 N.J.L. 350, 44 A.2d 333 (1945), affirmed 67 S.Ct. 504, 330 U.S. 1, 91 L.Ed. 711, rehearing denied 67 S.Ct. 962, 330 U.S. 855 91 L.Ed. 1297.

Compulsory education is a matter of public concern and legislative

regulation, and it should be enforced so long as statutory requirements are reasonable, subject to constitutional limitations. Id.

The legislature had conferred power and authority upon Juvenile and Domestic Relations Court to hear and determine issues condemned by 18:14-14 (see now, 18A:38-25, 18A:38-26) 18:14-15 (repealed). Stephens v. Bongart, 189 A. 131, 15 N.J. Misc. 80 (1937).

N.J.S.A. 18A:38-28. Truants; return to parents or school

Any attendance officer who shall find any child between six and 16 years of age who is truant from school, shall take the child and deliver him to the parent, guardian or other person having charge and control of the child, or to the teacher of the school which such child is lawfully required to attend.

N.J.S.A. 18A:38-29. Warning and arrest of vagrants or habitual truants

The attendance officer shall examine into all violations of this article, shall warn any child violating any of the provisions of this article and the parent, guardian or other person having charge and control of the child of the consequences of the violation if persisted in, and shall notify such person in writing to cause the child to attend school within five days from the date on which notice is served, and regularly thereafter. The attendance officer shall have full police power to enforce the provisions of this article and may arrest without warrant any vagrant child or habitual truant or any child who is habitually incorrigible or who is vicious or immoral in conduct or illegally absent from school.

N.J.S.A. 18A:38-30. Assistance of sheriffs, police officers, etc.

The sheriff and his officers and all police officers and constables shall assist attendance officers in the performance of their duties.

N.J.S.A. 18A:38-31. Violation of article by parents or guardians: penalties

A parent, guardian or other person having charge and control of a child between the ages of six and 16 years, who shall fail to comply with any of the provisions of this article relating to his duties, shall be deemed to be a disorderly person and shall be subject to a fine of not more than $5.00 for the first offense

and not more than $25.00 for each subsequent offense, in the discretion of the court.

In any such proceeding, the summons issuing therein, or in special circumstances a warrant, shall be directed to the alleged disorderly person and the child.

Following are excerpts of historical notes of Court Decisions upholding the validity and application of this statue:

...4. Burden of proof

In prosecution of parent or guardian for being allegedly a disorderly person in failing to comply with 18:14-14 (see, now, 18A:38-25, 18A:38-26) requiring that children between 7 and 16 regularly attend public school of district or day school in which there was equivalent instruction or receive equivalent instruction elsewhere than at school, State was not required to prove alternative provisions introduced by word "or" and it was incumbent upon the defendant if he should rely upon either of the exceptions to introduce evidence in support of them unless it appeared from the State's case. State v. Vaughn, 44, N.J. 142, 207 A.2d 537 (1965).

In prosecution of parent or guardian for being allegedly a disorderly person in failing to comply with 18:14-14 (see, now, 18A:38-25, 18A:38-26) that children regularly attend public school or day school in which there was equivalent instruction or receive equivalent instruction elsewhere than at school, for defendant to prevail on the basis of such exceptions there had to be introduced evidence from which it could be found that child attended equivalent day school or that child received equivalent instruction elsewhere, though if there was such evidence, ultimate burden of persuasion remained with State. Id.

N.J.S.A. 18A:38-32. District and county vocational school attendance officers

For the purpose of enforcing the provisions of this article, the board of education of each school district and the board of education of each county

vocational school shall appoint a suitable number of qualified persons to be designated as attendance officers and shall fix their compensation; except that if a county attendance officer or officers are appointed for any county, any district board of education of such county may be exempt from the appointment of a local attendance officer if such exemption is approved by the county superintendent. Each board shall make rules not inconsistent with the provisions of this article and subject to the approval of the commissioner, for the government of the attendance officers.

N.J.S.A. 18A:38-33. Tenure of attendance officers in city districts

The services of all attendance officers of the public schools of a city district shall, after employment in such district for one year, be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, conduct unbecoming an officer, or other just cause, and only in the manner prescribed by sub-article B of article 2 of chapter 6 of this title.

Recently, in William J. Wheatley, et. al., Board of Education of Burlington S.L.D. 24-28, 1974, the Commissioner of Education cited the statues governing compulsory attendance listed above and emphasized the principle that compulsory education in New Jersey is a matter of public concern and legislative regulation and that it should be enforced so long as statutory requirements are reasonable and subject to constitutional limitations. Citing Everson v. Board of Education of Ewing Township, 133 N.J.L. 350 (eg A. 1945), affirmed 330 U.S. 1, 67S ct. 504, 91 L.Ed. 711 (1947),,rehearing denied 330 U.S. 855, 67 S.Ct. 962, 91 L.Ed. 1297, he continued by observing that the State policy for compulsory attendance at school is of long standing and is in the public interest. The Commissioner upheld the Burlington Board's position that pupil participation in all regularly scheduled classroom learning activities in each area of study is essential in order for each pupil to receive the maximum benefits of a thorough educational program. He

further observed at pp. 26 and 27 that:

"Frequent absences of pupils from regular classroom learning experiences disrupt the continuity of the instructional process. The benefit of regular classroom instruction is lost and cannot be entirely regained, even by extra after-school instruction. Consequently, many pipils who miss school frequently experience great difficulty in achieving the maximum benefits of schooling. Indeed, many pupils in these circumstances are able to achieve only mediocre success in their academic programs. The school cannot teach pupils who are not present. The entire process of education requires a regular continuity of instruction, classroom participation, learning experiences, and study in order to reach the goal of maximum educational benefits for each individual child. The regular contact of the pupils with one another in the classroom and their participation in well-planned instructional activity under the tutelage of a competent teacher are vital to this purpose. This is the well-established principle of education which underlies and gives purpose to the requirement of compulsory schooling in this and every other state in the nation. ...

In the judgment of the Commissioner, the Board's policy of permitting pupil absences for whatever reason up to 30 instances, in each subject matter class, impedes and impairs the State policy for compulsory schooling. The length of the academic year for pupils in the public schools of this State averages approximately 182 days. Given such a limited number of school days for pupils, any local policy which condones, excuses, or encourages any absences by pupils constitutes a derogation of the long-standing State policy for compulsory and maximum attendance at school. Therefore, in the instant matter, the Commissioner finds and determines that the portion of the Board's attendance policy which permits pupils to be absent from each class or

subject matter course ... in an academic year is ultra vires, and is accordingly set aside.

The Commissioner is well aware that the Board's purpose in adopting the controverted policy was to shift the responsibility for classroom attendance to the pupils and their parents. The Commissioner is also aware that this Board and every other local board of education experiences difficulty in enforcing compulsory attendance requirements, and that school administrators expend a great deal of time and effort in this task. Notwithstanding these kinds of reasons, the public schools have the consistent obligation to require that their pupils be present in school in order that they may be taught. The policy is for the benefit of the pupils, their parents, and the community at large."

The entire concept of compulsory education is based on the idea that certain kinds of knowledge are required if one is to be capable of functioning in a complex society barring certain physiological handicaps. Theoretically, then students benefit from compulsory schooling inasmuch as it provides them with the rudimentary tools and general knowledge which are required for personal participation, and the society benefits in that there is a reservoir of its members with at least certain minimal skills to engage in various occupational functions.

It is interesting to note, moreover, that the Commissioner questioned the awarding of passing grades to students whose absenteeism from the classes in questions was significant. In most instances the absences were illegal inasmuch as they resulted either from unexcused class absences of truancy. In eight of nine cases the Commissioner upheld the action of the school district, although he directed it to discontinue its policy denying credit to any student absent from a given course for thirty days or more. He ruled, in essence, that any policy permitting students to refrain from attending classes or school for even one day with the exception of an approved alternative program of equivalent instruction is

in violation of existing statutes and is, therefore, illegal.

Implicit in the Wheatley case is a questioning of principles set forth in Dawn Minorics v. Board of Education of the Town of Phillipsburg March 24, 1972 and Gustave M. Wermuth and Sylvia Wermuth v. Julius C. Bernstein, Principal of Livingston High School, and Board of Education of the Township of Livingston, Essex County, 1965 S.L.D. 121. In Minorics, supra, the Commissioner observed that:

> "...there exists in the school system's grading policy a definite and specific penalty inherent...in the marking procedure -- the zero remains ... and is averaged in with other grades. There can be no doubt that the zero as awarded herein has the effect of a penalty that dilutes achievement, and that, in some instances where there may be a few objective grades, the zero has a significant impact on the final grade that a student may earn. The zero weighs the record down."

Similarly, the case of Gustave M. Wermuth and Sylvia Wermuth v. Julius C. Bernstein, Principal of Livingston High School, and Board of Education of the Township of Livingston, Essex County, 1965 S.L.D. 121, the Commissioner was requested to consider such a use of zero, a use that had the effect of lowering a pupil's grade when routinely assigned for disciplinary reasons. In part, the thrust of the petition in that case was: (at p. 125)

> "...against what is characterized as a system of 'penal discipline' which counsel has called a 'mandatory zero suspension system.'..." Specifically, it was alleged:
>
> "...that respondents imposed the 'penalty of suspension for numerous and varied breaches of the most minute detail of school discipline: that teachers are required to give 'mandatory markings of zero' while the pupil is suspended and an arbitrary reduction in the grade for the marking period for a certain number of such zeros: that the pupil may not take any action to eradicate the said zero or...take examinations missed:'..."

It is noted here, that the instant matter, there is no allegation that the School System arbitrarily reduced grades when a "certain number" of such zeros were received. However, similarly with the recital, ante, in Wermuth, it is clear that the mark of zero is mandatory when on certain occasions, students enrolled in the School System are illegally absent from school or suspended from the privilege of school attendance.

It was to this latter circumstance that the Commissioner particularly addressed himself in Wermuth, supra, when he cautioned that "marks and grades should not be used to 'serve disciplinary purposes.'" Specifically, in this regard, he said, at page 128, in Wermuth:

> "...The use of marks and grades as deterrents or as punishment is likewise usually ineffective in producing the desired results and is educationally not defensible. Whatever system of marks and grades a school may devise will have serious inherent limitations at best, and it must not be further handicapped by attempting to serve disciplinary purposes also. Attention is called to the statement of the Office of Secondary Education of the New Jersey State Department of Education in its publication 'Secondary School Bulletin,' Volume 20, No. 5, dated March 1961 and entitled: 'Suspension and Drop-Outs.'..." (Emphasis supplied.)

Since it is clear that, in the instant matter, the use of the mark zero tended to weight the term grade received and to weigh the record down, and since such weighting occurs only when students are truant or are on suspension from the privilege of school attendance, the practice must be viewed as one of the kind the Commissioner cautioned against in Wermuth: a practice that serves "disciplinary purposes." As such, the Commissioner holds that the practice is improper and should be terminated at the earliest practicable time.

Finally, the Commissioner reiterates his belief that such a finding does not present an erosion or dimunition of the authority of the school, and he holds

that the expressions of Wermuth, supra, in this regard, are equally appropos to the circumstances herein. Again, in that decision, the Commissioner said, at page 128:

> "...This enunciation of a philosophy with respect to suspension and marks should not be interpreted as an erosion of either the authority of the school staff or of the desirability of maintaining good order and high standards of behavior in public schools. An effective school is an orderly one and to be so it must operate under reasonable rules and regulations for pupil conduct. Unacceptable behavior must be restrained and discouraged and when necessary appropriate deterents and punishments must be employed for purposes of correction and to insure conformity with desirable standards of conduct. Such results are attained...by the great majority of school staffs through use of a variety of techniques adapted to the particular pupil and problem without having to resort to frequent suspensions and grade penalties..."

The Commissioner further issued a caveat to all local boards of education in the state in Wheatley, supra, at 27 and 28 to review their policies and rules regarding pupil attendance in order that such policies conform to the state policy and also provide the most effective methods of insuring maximum school attendance. In particular, public school policies should require that pupils complete assignments missed because of their absences, legal or illegal. Nevertheless, the Commissioner apparently questioned the ability of "average" or "below average" students to complete such assignments or derive much from any program of studies if their attendance is inadequate. Implicit in Wheatley, supra, at 29 the Commissioner seems to suggest that a mark of zero may be given by a student's instructor for work missed and not completed by the student after a reasonable amount of time has elapsed and the student has made little or no attempt to complete missed work. (Emphasis added.) Such a step may not be deemed punitive as defined in Minorics, supra and Wermuth, supra, provided that students are admonished to attend classes regularly, are given every opportunity to satisfactorily complete missed work, and

have the grading system clearly explained to them and applied to all students in a justifiable manner. One may further surmise that such a mark of zero may also be given if an instructor can prove beyond question that the student wantonly absents himself from class for unjustifiable reasons. Nevertheless, the burden of proof in which a matter clearly appears to be on the instructor and other school authorities. On page 29 in Wheatley, supra, the Commissioner observes that:

> "Petitioner E___ missed his English IV class a total of fifty times during the 1973-74 academic year. It is difficult to understand how this pupil could have been granted a final grade of "C" for this course when he missed almost thirty percent of the classroom instruction. The pupil should under these circumstances, either repeat the course or attend a summer school review session."...
>
> "Petitioner S___ missed her class in English IV a total of thirty-eight times, of which only nine were excused absences. The fact that she was granted a final grade of "D" is difficult to comprehend. Credit should not be granted for this course, in view of the excessive number of unexcused absences of Petitioner S___, and the Commissioner so holds. She also may either repeat the course or else complete an approved summer school program in English IV."

Of crucial significance in this case is the Commissioner's ruling in Petitioner Z___'s case in Wheatley, supra, at 30. She missed English IV a total of forty-two times and, of these, twenty-two were not excused. Her final grade in English IV was a "B". He observed that she had performed significantly above average in her schoolwork during the entire academic year. In view of the fact that her overall academic record disclosed that she earned three final grades of "A", and three final grades of "B", he concluded that she was able to perform on a superior level, and to make up school assignments she had missed, even though she had forty-two absences from that class. He, consequently, admonished the Burlington Board of Education to grant petitioner Z___ five credits for English IV

and award her a diploma of graduation.

In essence the Commissioner is admonishing any local board of education that currently maintains a "permissive" attendance policy inconsistent with statutory requirements and, subsequently, this and other similar rulings which enables a student such as Petitioner Z___ to derive maximum benefits that may accrue under such a policy to change it. Such students who "beat the system" and in fact are enrolled in a "correspondence program of studies" should not be penalized by the denial of course credit, the right to participate in graduation ceremonies, or the denial of a diploma or other certificate of recognition. Consequently, the Commissioner indirectly issues a caveat to all local boards of education to review their attendance policies and make certain that such policies are consistent with the Statutes and rulings governing student attendance in public schools.

Following is a listing of specific recommendations I consider to be of paramount importance toward proper enforcement of compulsory attendance regulations:

I. RECOMMENDATIONS TO BE CONSIDERED AT THE STATE LEVEL:

A. N.J.S.A., 18A:38-27 -- Truancy and Juvenile Delinquency Defined -- should be revised to clarify the responsibility of students beyond the age of 16. Definitions of "vicious" and "immoral" conduct should be provided or more specific language should be implemented in this statute.

B. N.J.S.A. 18A:38-29 -- Warning and arrest of vagrants or habitual truants -- should be updated and clarified by the state legislature defining the specific police powers of attendance officers and relative to initial and subsequent offenders. Again, the terms "vicious" and "immoral" conduct should be subject to serious scrutiny by the legislator as to its place in this and other statutes.

C. N.J.S.A. 18A:38-31 -- Violations of article by parents or guardians; penalties -- should be revised to specify the responsibilities of parents and guardians in having their children attend school regularly. (Precise responsibilities should be delineated in the Administrative Code.) Penalties should be revised from $5 to $15 for the first offense and not more than $100 for each subsequent offense. ...

D. N.J.S.A. 18A:38-32 -- District and county vocational school attendance officers -- should be revised to be more specific in defining the responsibilities of local, county and regional boards of education in appointing attendance officers. Minimum qualifications and responsibilities of such personnel should be standardized state-wide with recommendations for attracting and keeping highly-competent individuals for such positions. This may be detailed in revised Administrative Code provisions. Such recommendations should be drafted by the State Department of Education in collaboration with other educational groups,

including the New Jersey School Boards Association. These should include a suggested number of officers per student enrollment in any district as well as recommended terms and conditions of employment, including work day and year.

E. The State Department of Education in collaboration with other educational organizations should prepare an attractive brochure (in several languages) for state-wide distribution to all families of school-age children. Such distribution may be facilitated by local boards of education. This brochure should explain and clarify compulsory attendance statutes (following revisions recommended), commissioner rulings, decisions of the courts, and explicit responsibilities of parents and guardians. Each section of the brochure should have examples and questions and answers that have been raised (or may be raised) with regard to any item. We can no longer assume that every parent and legal guardian know their responsibility in this regard.

F. The State Legislature should establish procedures for the strict enforcement of all statutes, including expanding the function and services of Municipal and Juvenile and Domestic Relations Courts to effectively, efficiently and quickly expedite truancy hearings and payment of fines. This should be given top priority by the Legislature insofar as it is directly related to the principles of a "thorough and efficient" education.

G. The State Department of Education Division of Curriculum and Instruction should provide local school districts with a Directory of Alternative School Programs worthy of serious consideration for adoption and implementation in each district. Such a Directory should provide actual models of Alternative Schools, including philosophy, types of students served, curriculum, resources, funding, contact persons, and so forth. Sufficient copies should be provided for all administrative personnel.

H. The Executive Committee or/and the Board of Governors of the New Jersey Association of Secondary School Principals should establish a "Compulsory Attendance Committee" to initiate an in-depth study of the recommendations previously cited, as well as others from different sources, and establish procedural guidelines for continual dialogue and action among those institutions and agencies that are most apt to bring about desired changes.

II. <u>RECOMMENDATIONS TO BE CONSIDERED AT THE LOCAL LEVEL:</u>

A. As previously suggested, all local boards of education should adopt attendance regulations consistent with existing state regulations and decisions of the commissioner and the courts for implementation during the current year subject to revision consistent with state rulings.

B. Each local board of education should appoint a sufficient number of attendance officers to enforce the statutes.

C. Parents should be apprised of the district's attendance policy, the philosophy for it, and enforcement procedures.

D. School administrators and other teaching staff members should make every effort to determine the needs, interests, abilities, and aspirations of the students of their district and do whatever is necessary via curricula revision, creation of "schools within schools," alternative education programs, and so forth to accommodate their clientele. A well-planned

public relations program may be vital to such an endeavor in many districts during this period of scarce financial resources.

E. Special provisions should be made for exceptionally bright or gifted students having various learning disabilities relative to attendance and other aspects of the traditional school structure. For example, an exceptionally bright student who has consistently demonstrated excellence in all academic areas may be given the option of assisting other staff members, assigned to a nursing or convalescent home to work with the aged or indigent, or to be of service in any one of many different areas of interest to him or her without being required to attend traditional classes. Each situation should be handled accordingly following a review of the circumstances with all interested parties. Alternative grading and evaluation practices should be adopted commensurate with the situation.

At the other end of the educational spectrum is that student who has had a history of emotional, behavioral and academic problems and has not been able to function in an academic setting. After assessing the needs of this student a program applicable to this individual's situation should be pursued.

F. Local governing bodies should adopt ordinances governing their children's conduct in the community having discussed the reasons and intent with the public. Such ordinances should hold parents legally responsible for the action of their children and subject them to stiff fines. This should be the case especially in those instances when serious misconduct of any nature occurs during the days and hours in which school is in session and the child should have been in attendance but because of truancy or wanton leaving of the school's premises without authorization the child has engaged in acts of vandalism, assault, violence, robbery, extortion or any other illegal and/or disruptive act.